IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8834 OF 2004

Alka Vilas Gadkari& Ors. : Petitioners

(Orig.Defendant nos.12 to 15)

V/s.

Sulochana Shankar Gadkari & Ors. : Respondents

(Resp.nos.1 to 4-Orig.Pltfs.,

Resp.nos.5 to 21 - Orig. Deft.

nos.1 to 11 & Deft. nos.16 to 21)

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WITH

WRIT PETITION NO.8835 OF 2004

Alka Vilas Gadkari & Ors. : Petitioners

(Orig. Defendants)

V/s.

Sulochana Shankar Gadkari & Ors. : Respondents

(Orig. Plaintiffs)

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Mr.P.D.Dalvi for the petitioners.

Mr.Vijay Killedar for the respondent nos.1 to 4.

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CORAM : S.A. BOBDE, J.

June 20, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Killedar, learned counsel, appears and waives service of rule on behalf of the respondent nos.1 to 4.

Heard by consent.

2. The petitioners are original defendants in suits filed by the respondents. The respondents i.e. the sisters and the 1st wife of one Vilas Gadkari have filed two suits, being Regular Civil Suit no.161 of 2003 and Regular Civil Suit no.113 of 2003. The temporary injunction applications have been disposed of by a common order both at the trial stage and the appellate stage. It is, therefore, convenient to dispose of these two Writ Petitions arising out of the the two suits by a common order.

3. Regular Civil Suit no.161 of 2003 has been filed against the alleged second wife and the illegitimate children of Vilas Gadkari. They have also filed another suit, being Regular Civil Suit no.113 of 2003, against the landlords of the suit land bearing gat no.1037 admeasuring 2 hectares and 86 ares of village Danoli. The purchasers of the suit land i.e. the persons to whom the landlord has sold the suit land and the second wife as well as the illegitimate children of Vilas Gadkari are parties to that

suit. As regards the title, the Courts below have come to the conclusion that the respondents are owners of the suit property by virtue of the proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the "Act". Certificate under section 32M of the Act was also issued in favour of the respondents. The trial Court on the basis of the evidence on record came to the conclusion that the marriage of deceased Vilas with the petitioner Alka is not lawful and legal. Consequently, their children from the second marriage are not legitimate vide paras 16 and 17. On the other hand, the trial Court has observed that there is positive evidence to show that the marriage of the respondent i.e. Suman took place and she is the legally wedded wife of the deceased Vilas. On the important issue of possession, the trial Court came to the conclusion that though the legally wedded wife of deceased Vilas resides elsewhere, she can be said to be cultivating the land personally in accordance with the definition of the term under the Act. Voluminous documentary evidence seems to have been filed on this question by both the parties. The crucial evidence regarding possession is sale of the sugarcane crop from the suit field. The documents of the respondents, viz., the tonnage slips showing supply of sugarcane from the suit property to Datta Shetkari

Sahakari Sakhar Karkhana in the name of Hemlata Jaykumar Almane in the year 2002-03 have been accepted. The reason why the sugarcane has been supplied in the name of Hemlata, viz., that she was a shareholder of the sugar factory has also been accepted. The sugarcane slips, filed at exh.24/8 and 9 and the tonnage slips at exh.24/13 to 16 filed by the applicant have not been accepted since the receipts show that supply has been made in the name of deceased Vilas. Receipts showing payment of assessment tax and water tax are also in the name of the deceased Vilas. The receipts at exh. 24/22 and 23 show that on 25.6.2003 water tax has been paid by one Anjali Rajendra Pise and on 8.12.2001 water tax has been paid by Rajendra Pise. As regards defendant no.5 who is said to have purchased the land, the trial Court has come to the conclusion that that the compromise deed has been executed at his instigation. The compromise is said to have been executed between Vilas and the landlord by which Vilas is said to have surrendered the tenancy. The Courts below have, therefore, upheld the right, title and interest of the respondents in the suit agricultural field. As observed earlier, the Courts have also found that they are in cultivation and possession of the suit field and have a right to possess the suit property. I find that the order of the Courts below are based on evidence and proceedings

before the tenancy Court. In these circumstances, having regard to the concurrent findings of both the Courts below, I am not inclined to interfere with the order.

4. Mr.Dalvi, learned counsel for the petitioners, is right in submitting that the matter needs to be decided expeditiously because, according to the petitioners, they are in possession and there is also evidence on record to the contrary. The request of expeditious disposal of the suits, in the circumstances of the case, is valid. I, therefore, hereby dismiss the petitions and direct the trial Court to expeditiously dispose of the suits within a period of six months from the date parties appear before it. The parties are directed to appear before the trial Court on 11.7.2005.

5. The rule stands discharged.

Sd/-

S.A. BOBDE, J.